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SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE
AT BILASPUR (C.G.)

W.P. No. 6849 (L) 2006

Petitioner

Prabhu Lal Thekwar S/o Shri Jogilal Thekwar
Age About 40Yrs.
R/o-Near Chowhan Chhaya, Subhash Nagar,
Durg, Dist. - Durg (C.G.)

P.R. No. 5523/06
Presented by Shri Sanjay Kumar Sahu
dated 16/12/06

Vs

Respondents-

1. **State of Chhattisgarh**
Through-Secretary
Dipt. of Water Resource, D.K.S. Bhavan,
Raipur (C.G.)

2. **Executive Engineer**
Tandula Jal Sanshadhan Vibhag,
Division,Durg
Dist.-Durg (C.G.)

3. **Sub Divisional Officer**
Tandula Jal Sanshadhan Vibhag,
Sub division,Durg
Dist.-Durg (C.G.)

4. **Presiding Officer,**
Labour Court, Durg (C.G.)

5. **Chairmen Industrial Court,**
Ghadi Chowk, Raipur (C.G.)

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NOTARY - [illegible] CHANDEL NOTARY DURG (C.G.) R.No. C.G.06/17 Dt. 22-5-03 GOVT. OF INDIA

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA.

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

S.B.: Hon'ble Shri Satish K. Agnihotri, J.

Writ Petition (L) No. 6849 of 2006

Petitioner : Prabhu Lal Thekwar

Versus

Respondents : State of Chhattisgarh and others

Present : Mr. C.R. Sahu, learned counsel for the petitioner.

ORDER

(Passed on 23rd day of February, 2007)

1. By this petition filed under Article 226/227 of the Constitution, the petitioner challenges the validity of the order dated 11.7.2006 (P/12), passed by the Industrial Court, Raipur in Appeal No. 136/CGIR/2005/A-II and further seeks for relief of reinstatement of the petitioner with full back wages.

2. The indisputable facts, in nutshell, are that the petitioner was appointed as daily-wager on the post of driver on 1.4.86. The petitioner was arrested in a criminal case and was sent on judicial custody on 14.5.91. He was released from judicial custody on 1.7.91. He was denied the joining because of pendency of the criminal case. On 21.10.93, the petitioner was directed to produce the order of acquittal, passed in the criminal case. Thereafter, the petitioner remained absent from 8.10.93 to 31.1.94.

3. The petitioner preferred an application, being Case No. 43/MPIR/94, before the Labour Court, Durg. The Labour Court vide order dated 11.20.2000 (P/8) held that the petitioner was working as daily wager

and he did not remain absent unauthorizedly. Thus, the Labour Court directed reinstatement in service without back wages.

4. Against the said order, passed by the Labour Court, the Superintending Engineer and Executive Engineer, Tandula Water Resources Department, Durg filed an appeal, being Case No. 109/M.P.I.R.A/II/2000, before the Industrial Court, Raipur. The Industrial Court vide order dated 5.8.2003 (P/9) held that the Labour Court has not considered asto whether the employee was a daily-wager or his appointment was in accordance with statutory provisions. Thus, the appeal of the respondents was allowed and the matter was remitted back to the Labour Court for a fresh decision on merit after examining evidences, if any, adduced by the parties.

5. The Labour Court vide award dated 21.7.2005 (P/10) after having considered all the aspects of the matters held that it was not proved that the petitioner has worked from 8.10.1993 to 31.1.94 as he himself admits in paragraph 13 that after removal from the service, he has not moved before the Labour Court. The petitioner, having spent 15 days in the police remand, has not taken any action. It was further held that removal of the petitioner was legal and valid.

6. Against the said order, passed by the Labour Court, the petitioner preferred an appeal, being Appeal No. 136/CGIR/2005/A-II, before the Industrial Court, Raipur. The Industrial Court confirmed the findings recorded by the Labour Court and further, held that the petitioner has not worked for 240 days in the preceding calendar year and the petitioner had left the service on its own. The petitioner had committed grave misconduct of manipulating the documents. Thus, the appeal of the petitioner was dismissed.

7. I have heard learned counsel for the petitioner and gone through the records appended thereto. The findings recorded by the courts below are concurrent and based on evidence. It is admitted fact that the petitioner was appointed as daily-wager in the Water Resources Department. It is well settled principle of law that the daily wagers, temporary or ad hoc employees have no right to the post seeking reinstatement, regularization on the post, if their appointments were dehors the constitutional scheme of the employment or not in accordance with rules made under the proviso to Article 309 of the Constitution of India. The petitioner has no right to continue/regularize or reinstatement on the post on daily wages basis in view of dicta laid down by the Hon'ble Supreme Court in catena of decisions.

8. The Supreme Court in the case of **Surinder Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others**[1] observed as under:-

> "35. Equal opportunity is the basic feature of our Constitution. Public employment is repository of the State power. Certain status and powers emanate from public employment.
>
> 36. H.M. Seervai, in his celebrated book Constitutional Law of India has mentioned that in fact the principle of recruitment by open competition was first applied in India and then applied in England.
>
> 37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.
>
> 38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional

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scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regurisation of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

9. It is trite that the High Court exercising the power of judicial review would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational. In the facts of the case, the findings are concurrent and there is no illegality or irrationality or perversity in the award passed by the Labour Court, thereafter, confirmed by the Industrial Court.

10. As a result and for the reasons above-stated, the writ petition is dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

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1. (2006) 7 SCC 684

Babhu